THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7063 of 2000

30.11.2005

Between:

Smt.Kanakapudi Vijayamma, W/o.Kanakapudi Yakobu

… Petitioner

AND

1. The State of A.P., represented by Principal Secretary,
Home Department, Secretariat, Hyderabad

and others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7063 of 2000

ORDER:

One Manda Chinni was convicted for an offence under Section 302 of Indian Penal Code, 1860 by the Court of II Additional Sessions Judge, Vijayawada in S.C.No.25 of 1988 dated 17.12.1990. He was sentenced to undergo Life imprisonment. As convict No.1742, he was lodged in Central Prison, Rajahmundry. It appears, during his incarceration, he was on parole for a period of three years ten months but the said period was not counted for reckoning the actual sentence undergone. Therefore, the younger sister of Manda Chinni (convict No.1742) filed the present writ petition seeking a direction to the respondents to include the period of parole while counting the period of sentence undergone by Manda Chinni and take steps for his release.

A counter affidavit is filed by the Additional Inspector General of Prisons opposing the writ petition. It is stated that as per Rule 974(1) of A.P. Prison Rules, 1979 (the Rules, for brevity), the period spent under parole or emergency leave will not count as part of the sentence and that Chinni has undergone sentence of five years nine months and one day, and therefore, he cannot be released as per G.O.Ms.No.18, Home (Prisons-C) Department, dated 25.1.2000. It is stated that a convict, who has undergone a sentence of seven years, alone is eligible under the said Government Order.

Though the counter affidavit is filed in the year 2000, no reply affidavit is filed denying the allegations made in the counter affidavit.

The learned Counsel for the petitioner is absent and there is no representation. Heard learned Government Pleader for Home, who placed strong reliance on Rule 974(1) of the Rules, which reads as under.

> 974 (1) A prisoner may be released on parole/emergency leave under

> Section 432 of the Code of Criminal Procedure, 1973, for such period as the Government may order in case of serious illness, death, or marriage of any member of the family or near relative or for any other sufficient cause. The period spent under Parole/Emergency leave will not count as a part of the sentence.

A plain reading of the above rule would show that the petitioner has no right to seek a writ of Mandamus as prayed for. The period spent by convict under parole or emergency leave cannot be calculated as part of sentence undergone.

The writ petition is therefore misconceived and is accordingly dismissed. No costs.

_____

(**V.V.S.RAO,J**)

November 30, 2005.

YS